ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-66009; FRL 3845-4]

Disposal of Polychlorinated Biphenyls

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: EPA is providing advance notice of proposed rulemaking (ANPRM) for the disposal of certain classes of PCBs and PCB Items and certain other areas of the PCB regulations under the Toxic Substances Control Act (TSCA). EPA is considering amending its TSCA PCB disposal regulations [40 CFR 761.60] to address (1) alternative disposal methods to those currently permitted which do not pose an unreasonable risk of injury to human health and the environment, (2) classes of PCBs and PCB Items not contemplated by the disposal regulations, and (3) regulatory requirements for existing classes of PCBs and PCB Items. EPA is soliciting written comments on these and other areas of the PCB regulations. This ANPRM also constitutes an "initiation of a proceeding" under TSCA section 6 in response to a petition filed under TSCA section 21 (Refs. 1 and 2) which EPA granted by letter dated June 8, 1990 (Ref. 3).

DATES: Written comments on the ANPRM or other issues raised by this notice must be submitted on or before August 9, 1991.

ADDRESSES: Three copies of comments identified with the document control number (OPTS-66009) must be submitted to: TSCA Public Docket Office (TS-793), Office of Toxic Substances, rm. NE G004, Environmental Protection Agency, 401 M St., SW., Washington DC 20460. A public record has been established and is available in the TSCA Public Docket Office at the above address from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, rm. E-543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551, FAX (202) 554-5603 (document requests only).

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, EPA is soliciting comments on a draft guidance document regarding disposal alternatives to chemical waste landfills for non-liquid PCBs.

I. Background

The TSCA PCB disposal regulations are set forth in 40 CFR 761.60. In general, the scope of the TSCA PCB disposal regulations is limited to PCBs and PCB Items with concentrations of 50 parts per million (ppm) and above [40 CFR 761.1(b)]. PCBs and PCB Items contaminated at levels less than 50 ppm may be regulated if the original PCB material was contaminated at levels of 50 ppm or above [40 CFR 761.1(b)]. The general regulation regarding the disposal of PCBs requires disposal in an incinerator that complies with 40 CFR 761.70 [40 CFR 761.60(a)(1)]. There are five exceptions to this general regulation for various categories of PCBs which are set forth in § 761.60(a)(2), (3), (4) and (5) and (e).

These exceptions provide additional methods of PCB disposal other than incineration for the categories of PCBs listed under each exception. These methods include chemical waste landfill, high efficiency boiler, a method approved by the Regional Administrator of the Region in which the material is located, and an approved alternative method of destruction equivalent to incineration. Each of these additional disposal methods is not necessarily available for all categories of PCB waste. The TSCA PCB disposal regulations prescribe the method of disposal that is available for each category of material. PCBs which do not fall into one of these five exceptions must be incinerated in accordance with the general regulation stated in 40 CFR 761.60(a)(1).

Certain classes of PCB Items are regulated for disposal under 40 CFR 761.60(b),(c), and (e). Currently, PCB Articles are regulated under 40 CFR 761.60(b). PCB Containers are regulated under 40 CFR 761.60(c). Procedures for obtaining approval for an alternate method of destroying PCBs and PCB Items are provided at 40 CFR 761.60(e). The regulatory requirement for a PCB Item may prescribe a particular method of disposal for the Item itself (such as incineration or disposal in a chemical waste landfill) or specify a means for rendering the Item unregulated for disposal (such as draining the Item of PCB liquids). To determine how particular classes of PCB Items are regulated for disposal, the appropriate regulatory provision at 40 CFR 761.60 should be consulted.

II. Advanced Notice of Proposed Rulemaking For PCB Disposal Regulations

Since the Agency first promulgated its PCB use and disposal regulations in 1978 and 1979, EPA's knowledge about the universe of PCB materials has increased greatly. The Agency has gained valuable knowledge and experience regarding the various sources and uses of PCB materials. Many other disposal alternatives to incineration have been identified since that time.

Over the past 12 years, EPA has had the opportunity to evaluate and draw conclusions about the effectiveness of the PCB regulations in preventing an unreasonable risk to human health and the environment from exposure to PCBs and their economic impact. At the present time, EPA is investigating whether new and innovative technologies (e.g., biodegradation, solvent extraction from soils and *in-situ* vitrification) are potential regulatory disposal options that effectively and safely manage PCBs. EPA is also considering re-examining the scope of PCBs and PCB Items subject to the disposal regulations. The objective of the anticipated rulemaking is to modify the current PCB regulations to allow for maximum flexibility in controlling PCBs or PCB Items based on their risk to human health and the environment while providing for the Regions to make site-specific decisions about PCB disposal options to the maximum extent possible.

The purpose of this Advanced Notice of Proposed Rulemaking (ANPRM) is to announce the Agency's intent to reconsider portions of its PCB regulations based upon information and experience acquired over the past 12 years in dealing with PCBs. EPA solicits written comments that will assist EPA in achieving this objective.

One type of information the Agency is soliciting for its proposed rulemaking relates to alternative disposal methods. The Agency welcomes comments on the effectiveness of various disposal alternatives in reducing the toxicity, volume or mobility of the PCBs; the range of environmental media applicable to each disposal alternative; the cost of each disposal alternative; and the potential for any environmental impact resulting from use of the disposal alternative (e.g., cross-media pollution, incidental environmental impact).

In addition to alternative disposal methods for PCBs, EPA wishes to solicit comments on disposal of classes of PCBs and PCB Items which EPA was unaware of when it promulgated the

original disposal regulations. Comments should identify such PCBs and PCB Items and should provide EPA with either risk information or other clear information which establishes whether disposal of these items according to various methods poses a risk of injury to health or the environment.

EPA also wishes to receive comments on currently regulated PCBs and PCB Items for which there do not exist adequate regulatory disposal alternatives. Comments regarding currently regulated PCBs or PCB Items should address the specific inadequacy of the regulatory alternative (e.g., inadequate disposal facility capacity, undue financial burden, adverse environmental impact from current disposal alternatives). Examples of PCBs and PCB Items currently under consideration for more flexible regulation include large volume, non-liquid PCB wastes such as contaminated shredder waste; large volume PCB Items such as natural gas pipeline; mixed wastes such as PCB/radioactive wastes; and PCBs and PCB Items not originally contemplated by the disposal regulations such as household wastes (e.g., used paint), PCBs in HVAC gaskets and PCBs in gaskets and felt sound-dampening material in marine applications. Although some of these PCBs or PCB Items are concurrently regulated by other Federal, State or local law, EPA is seeking to address the problems presented by the TSCA regulations alone.

A. Large Volume, Non-Liquid PCB Wastes

EPA is requesting comment on additional disposal methods for large volume, non-liquid PCB wastes that do not present an unreasonable risk. Currently, these materials may be disposed of in an incinerator that complies with 40 CFR 761.70, in a chemical waste landfill that complies with 40 CFR 761.75, or pursuant to an approved alternate method of destruction equivalent to incineration, 40 CFR 761.60(e).

Since 1978, EPA has permitted the disposal of non-liquid PCB wastes in chemical waste landfills (43 FR 7153). In 1978, the Agency believed that this disposal method represented a practical alternative to incinerating these materials. EPA now believes that there are additional disposal methods that do not pose an unreasonable risk of injury to human health or the environment for some large volume, non-liquid PCB wastes. Examples of large volume, non-liquid PCB wastes include those from the shredding of automobiles, white goods and industrial scrap, as well as certain classes of soils, sludges and sediments.

Alternative disposal methods permitted by EPA include thermal destruction, physical separation, solidification/stabilization, biological and chemical dechlorination technologies. These methods are discussed at greater length in the draft guidance document, "Interim Guidance On Non-Liquid PCB Disposal Methods To Be Used As Alternatives To A 40 CFR 761.75 Chemical Waste Landfill (CWL)" (Ref. 4) which may be obtained by contacting the Environmental Assistance Division as reflected under the heading FOR FURTHER INFORMATION CONTACT.

B. Large Volume PCB Items

EPA is requesting comment on additional disposal methods for large volume PCB Items. Currently, if these materials are contaminated with PCBs at levels equal to or greater than 500 ppm, they may be disposed of in an incinerator that complies with 40 CFR 761.70, in a chemical waste landfill that complies with 40 CFR 761.75 (after draining and proper disposal of the drained liquid PCBs), or pursuant to an approved alternate method of destruction equivalent to incineration, 40 CFR 761.60(e).

Large volume PCB Items are those items whose comparatively large surface areas are contaminated with comparatively small quantities of PCBs. Examples of large volume PCB Items include natural gas pipelines, natural gas ventilation systems and air compressor systems. Large volume PCB Items present unique issues regarding their disposal. First, the location of PCBs in these Items is not always well known in contrast to smaller volume PCB Items such as transformers and capacitors. Identifying where or if mobile PCBs are located in large systems that contain PCBs (or once were in contact with PCBs during their use) at the time of their disposal is a prerequisite to utilizing a method of disposal which does not pose an unreasonable risk of injury to human health or the environment. Second, these Items are often contaminated with PCBs on their interior or exterior surfaces in non-liquid, rather than liquid, form. This can create difficulties in the sampling and measurement of the level of PCB contamination, i.e., in parts per million or milligrams per kilogram of material. This difficulty has been addressed by EPA in the development of its Spill Cleanup Policy by the use of surface level concentrations in the form of wipe samples and expressed in a surface measurement such as micrograms per 100 square centimeters. Third, under the current regulations, disposal of these items is required to be in a chemical waste landfill if the item is not decontaminated under an alternative disposal technology permit. Such disposal is not the best use of limited chemical waste landfill space given the degree of hazard that these large items present and the amount of the PCB Items that would have to be disposed.

EPA has interpreted its regulations to mean that smelting of PCB-contaminated electrical equipment is permissible because disposal of such equipment is unregulated by the PCB regulations. Similarly, disposal of PCB-contaminated articles such as PCB-contaminated pipeline is unregulated by the PCB regulations. Smelting is currently used to recover precious metal from the carcasses of PCB-contaminated electrical equipment from which all free flowing liquid has been drained. EPA has determined that "[T]o qualify as disposal, the practice [salvaging] must be one which would ... otherwise complete or terminate the useful life of PCBs or PCB Items. ... In sum, salvaging of less than 500 ppm drained [electrical] equipment is unregulated to the extent that: (1) Scrapping practices do not result in spills or uncontrolled discharges of PCBs, and (2) any PCB-contaminated components are not reintroduced into commerce."

EPA requests comment on whether it should regulate the disposal of these items, including data to support whether any such regulation is necessary to prevent an unreasonable risk of injury to health or the environment. Also, EPA requests recommendations on methods of decontaminating large volume PCB Items.

C. Radioactive Mixed Wastes

The Agency is also seeking information and comment regarding the regulation under TSCA of the continued use, storage and disposal of mixtures, items and wastes with both PCB and radioactive constituents. For the purposes of this notice, radioactive wastes include those regulated under the Atomic Energy Act (i.e., source, special nuclear and byproduct material) and Naturally-occurring and Accelerator-produced Radioactive Materials (NARM) subject to regulation under other statutes such as the Resource Conservation and Recovery Act (RCRA); Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); and the Clean Air Act (CAA) that may contain regulated PCBs. Information and/or comments should propose criteria for

authorization of continued use, storage and disposal of such materials which minimize risks to human health and the environment from PCBs and, with respect to the radioactive components, keep the risks As Low As Reasonably Achievable (ALARA). The Agency is interested in identifying and coordinating the use, storage, or disposal of such materials under TSCA with any other Federal statutory or regulatory requirements. However, since TSCA and the PCB regulations do not have statutory waivers, EPA is interested in receiving comments on whether the regulations should be amended to provide flexibility on a case-by-case basis to address specific use authorizations, specific storage requirements, issues unique to PCB/radioactive mixed waste management. For instance, the 1-year storage for disposal requirement for PCBs at 40 CFR 761.65(a) may have to be amended where no disposal technology for radioactive mixed wastes currently exists. (See Unit III.H.3. of this document for a further discussion of extending the 1-year storage for disposal requirement for radioactive mixed wastes.) Although EPA is not proposing in this rulemaking to address issues that arise because of regulations under statutes other than TSCA, EPA believes that there may be a number of issues that can be resolved by amending the PCB regulations.

D. Issues Not Originally Contemplated When the Rules Were Promulgated

EPA is considering a provision that would address household wastes and non-household wastes resulting from previously unknown uses of PCBs such as items that contain PCBs as an integral, but not an easily separable component of the item, as well as other situations not previously addressed.

As is consistent with the definition of "household waste" under Subtitle C of the Resource Conservation and Recovery Act (RCRA) regulations, EPA is considering excluding PCB household waste under TSCA. EPA may define household waste by the same criteria as is used under RCRA: (1) The waste must be generated by individuals on the premises of a household, and (2) the waste must be composed primarily of materials found in the wastes generated by consumers in their homes (49 FR 44978, November 13, 1984). PCBs found in used or partially used cans of household paint may fit into this category. EPA is requesting comments on other PCB wastes that may fit into this definition.

EPA, under current TSCA policy, requires that household wastes be separated (i.e., regulated PCB waste from unregulated wastes), and regulated waste be manifested and moved to a storage or a disposal facility within 10 days. Storage of the regulated PCB waste would have to be in a § 761.65(b) storage area and would be subject to the 1-year storage requirement.

In adopting a provision similar to the RCRA household waste exemption, EPA would distinguish commercial storage activities from collection programs established by municipalities for the removal and temporary storage of PCBs and other hazardous wastes found in household waste. This household waste exemption would essentially place these wastes in an unregulated status (i.e., household wastes regardless of PCB concentration would not be regulated for disposal). EPA solicits comments on the applicability of a household waste exemption under TSCA.

Additionally, EPA has recently discovered several widespread PCB applications which were not considered when the original regulations were developed. Significant levels of PCB contamination have been found in HVAC (heating, ventilation and air conditioning units) gaskets, as well as in gaskets and felt sound-dampening materials in marine applications (e.g., nuclear submarine reactor compartments and electrical cable). EPA solicits additional information on other locations where PCBs have been identified, in situations where the use of PCBs has not been authorized under the current regulations.

III. Other Regulatory Changes/Modifications

In today's notice, EPA is also soliciting comments on several aspects of the current PCB regulations which the Agency believes may require modification. Experience in implementing the PCB regulations has exposed several regulatory gaps which, if left unaddressed, would result in either ineffective or unnecessarily expensive health and environmental protection standards. The Agency will also take comments regarding other aspects of the PCB disposal regulations which may require modification or clarification. Comments should address the specific inadequacy of the regulatory provision(s). Issues on which comments are solicited include, but are not limited to, the following:

A. Marking

The requirements of the two marking sections (40 CFR 761.40(b) and (e)) which require marking of transport vehicles need to be combined. These two sections seem to require the same thing: the marking of transport vehicles when they are loaded with PCB material at 50 ppm or greater. In each case, one must mark a transport vehicle when it is loaded with PCB Containers that contain more than 45 kilograms (kg) of liquid PCBs in concentrations greater than 50 ppm.

This double coverage resulted from a change in definitions between 1977 and 1979. In the proposed regulation of May 24, 1977 (42 FR 26572), the regulatory language read: "Effective March 31, 1978 each transport vehicle loaded with PCB containers with more than 45 kg of PCB chemical substances or mixtures in the liquid phase ... shall be marked with mark ML." At that time, the definition of PCB Mixture meant PCBs greater than or equal to 500 ppm and the definition of PCB Chemical Substance meant a biphenyl molecule chlorinated to varying degrees. In the June 7, 1978 proposed regulation (43 FR 24804), EPA proposed to change the definition of PCB Mixture to greater than or equal to 50 ppm PCBs. This change was promulgated in the May 31, 1979 final regulation (44 FR 31514). In addition, in this final regulation, the terms "PCB Mixture" and "PCB Chemical Substance" were incorporated into the definition of "PCB" and "PCBs". The current regulation at 40 CFR 761.40(e) essentially updates 40 CFR 761.40(b) indicating that the 50 ppm PCB concentration trigger for the marking of transport vehicles begins October 1, 1979; prior to this date the trigger was 500 ppm.

EPA solicits comments on how best to remedy this duplication. Options include deleting either § 761.40(b) or (e) or deleting both sections and rewriting the requirement.

B. DOT Containers for Storage of PCB Waste

EPA regulations at 40 CFR 761.60(b)(2)(vi) and 761.65(c)(6) authorize the use of containers other than Department of Transportation (DOT) specification 5, 5B, or 17C for PCB shipment and storage, provided that "such containers are designed and constructed in a manner that will provide as much protection against leaking and exposure to the environment as the DOT specification containers, and be of the same relative strength and durability as the DOT specification containers."

The EPA regulations on PCB containers, as currently written, essentially require the use of the most durable DOT-approved containers (specification 5, 5B, and 17C) for PCB containment, shipment, and storage. The

design specifications and engineering criteria used in the manufacture of these drums (ability to withstand high internal pressures, survive drop tests from extended heights, etc.) are, in DOT's opinion, not really necessary, given the physical and chemical properties of PCBs. Finally, EPA is interested in receiving comments on whether the regulations should be amended to provide flexibility to the Regional Administrators in allowing the temporary storage of mixed radioactive/PCB wastes in other than DOT containers. EPA is aware of situations where mixed radioactive/PCB wastes need to be stored at the point of generation on a temporary basis to adequately characterize the waste prior to placement in DOT containers for shipment. DOT containers are inappropriate for storing wastes on a temporary basis since access to the materials once placed in the container is severely limited. Comments regarding the selection of alternate containers and/or applicable limitations are appropriate.

EPA solicits comments as to whether EPA should defer to DOT in all cases when the question of what type of packaging should be used to transport or store PCB waste. EPA could maintain the section but would revise it to simply state that when transporting or storing PCBs, one must comply with DOT's packaging requirements for materials classed as ORM-E materials in 49 CFR parts 171–180. Alternately, EPA may attempt to list all the drum types that DOT would allow for PCBs. Comments are also requested on how EPA should rewrite §§ 761.60(b)(2)(vi) and 761.65(c)(6) since DOT has finalized its rule published under DOT Docket No. HM–181 (December 21, 1990; 55 FR 52402), entitled "Performance-Oriented Packaging Standards; Changes to Classification, Hazard Communication, Packaging and Handling Requirements Based on UN Standards and Agency Initiative" (Ref. 9).

C. Policy Regarding the Definition of a PCB Transformer

EPA inspectors have encountered instances where they suspected the manufacturer's name plate and other identifying information had been removed from PCB Transformers to avoid the expense of properly disposing of the units. As a remedy for those situations where no identifying information exists to properly classify the transformer, EPA is considering amending the definition of a PCB Transformer at 40 CFR 761.3 to include the following language: "A transformer must be assumed to be a PCB Transformer if either of the following conditions exist:

(1) The transformer does not have a nameplate, has not been tested to determine PCB concentration, and there is no information available to indicate the type of dielectric fluid in it.

(2) The transformer is a mineral oil transformer, has not been tested, and reasons exist to believe that the transformer was filled with greater than 500 ppm PCB fluid."

This has been EPA's policy since 1979, and EPA seeks to strengthen this policy by including it within the regulatory text defining PCB Transformers (see the preamble to the "Ban Rule," 44 FR 31517, May 31, 1979).

In addition, there is still some confusion within the regulated community concerning the meaning of "PCB-Contaminated Electrical Equipment" as defined at 40 CFR 761.3. Part of the definition says that oil filled electrical equipment, other than those items that may be assumed to be less than 50 ppm PCBs, must be assumed to be PCB-Contaminated Electrical Equipment (i.e., between 50 and 499 ppm). Many have construed this to mean that a transformer with any fluid in it must be assumed to be PCB Contaminated. This is not the case. Unless there is reason to believe a transformer contains PCB (askarel) dielectric fluid or otherwise has 500 ppm PCB or greater (see 44 FR 31531), EPA allows a transformer to be classified as PCB-Contaminated (i.e., containing PCBs at concentrations between 50 and 499 ppm) only if the transformer contains mineral oil dielectric fluid.

In today's notice EPA solicits comments on the need to insert the word "mineral" before the words "oil filled electrical equipment" as referenced above to clarify this definition.

D. Drained PCB-Contaminated Transformers

The provisions in 40 CFR 761.60(b)(4) require that PCB-Contaminated electrical equipment (assumed to contain 50–499 ppm PCBs) be disposed of by draining all free flowing liquid from the electrical equipment and disposing of the liquid in accordance with § 761.60(a)(2) or (3). The disposal of the drained electrical equipment is not regulated. EPA has interpreted smelting of transformer carcasses for recycling to constitute disposal (Ref. 5).

Originally, EPA did not see any reason to regulate the disposal of the drained PCB-Contaminated electrical equipment due to the low potential exposure to humans and the environment and the valuable copper and steel that could be salvaged for recycling. However, EPA has received anecdotal information that the exposure risk to humans or the environment resulting from the disposal of this type of drained equipment may be significant and warrant additional control by the Agency. For example, EPA is aware of allegations concerning drained PCB-Contaminated Transformers that have been cut in half and illegally used a bar-b-que grills. Additionally, some salvaging operations allegedly place used automobile or truck tires around the cores of these transformers and ignite the tires so as to burn off any paper or cellulose in the core in order to reclaim the copper.

EPA is considering whether to restrict the disposal of these drained pieces of contaminated electrical equipment to ensure the equipment is not illegally reused and is soliciting comments on the types of controls/restrictions that should be put in place. Possible remedies to this problem are: requiring decontamination, stricter controls to ensure the unit was in fact drained of all free flowing liquid, and making the regulation explicitly state that salvaging of metals other than by smelting is not disposal of PCBs.

E. Temporary Storage of Greater Than 500 ppm PCB Liquid

The provisions of 40 CFR 761.65(c) permit the temporary storage of certain PCB Items in an area that does not meet the requirements of paragraph (b) of that section for up to 30 days from the date of their removal from service. Temporary storage is not allowed, under this section, for liquid PCBs greater than 500 ppm. The regulations under 40 CFR 761.20(c)(2) do, however, permit processing and distribution in commerce of PCBs and PCB Items greater than 50 ppm for purposes of disposal. EPA solicits comments on how it should regulate the following scenario: PCB Transformers (≧500 ppm PCBs) are slated for disposal; the liquid is drained into 55 gallon drums and the drums are to be transported to an approved storage or disposal facility. Does each drum have to be loaded onto the transport vehicle and transported each time it is filled, or should there be a reasonable amount of time allowed to temporarily hold or store these drums until the transport vehicle can be fully loaded? Should this temporary holding/storing be considered as being part of the processing for disposal of this waste or should the provisions for temporary storage be amended to include temporary storage of liquid PCBs at greater than 500 ppm?

EPA is soliciting comments on whether to allow the temporary storage of liquid PCB waste greater than 500 ppm, or to consider an activity as described in the preceding scenario as processing for disposal.

F. Sale of Totally Enclosed PCBs or PCB Items Greater Than 50 ppm

Currently, totally enclosed PCBs or PCB Items with PCB concentrations of 50 ppm or greater sold before July 1, 1979 for purposes other than resale may be distributed in commerce by resale (40 CFR 761.20). EPA is requesting comment on establishing a requirement that records be maintained on the sale of totally enclosed PCB Transformers and large PCB Capacitors. Records would list such information as the date of sale, name and address of purchaser, and the serial number of the PCB Item. By requiring that records be kept on PCB Transformer and large PCB Capacitor sales, EPA is attempting to limit illegal disposal by those who explain the disappearance of this equipment by claiming a sale has occurred, when in fact an illegal disposal has taken place. EPA is considering imposing a 3-year retention period for records documenting PCB Transformer and large PCB Capacitor sales. EPA is interested in receiving comments on establishing a recordkeeping requirement and the length of time such records should be maintained.

G. Spill Cleanup Policy

To reflect changes made to the reportable quantity under the Comprehensive Environmental Resource, Compensation and Liability Act (CERCLA), the Agency is considering revisions to PCB regulations at 40 CFR 761.125(a)(1) to require the reporting of PCB spills of 1 pound or more to the National Response Center. On August 14, 1989, EPA changed the reportable quantity of PCBs under CERCLA to 1 pound of pure PCBs (54 FR 33426). The reportable quantity to the regional EPA office under 40 CFR 761.125(a)(1)(iii) will remain the same. In addition, the Agency is confirming that it was the intent of the Spill Cleanup Policy to provide guidance for the cleanup of recent spills. Some individuals have attempted to use the Spill Cleanup Policy to address all spills, regardless of the age of the spill or the medium (e.g., where the contamination occurred such as releases into soil, water or other liquids). EPA stresses the point that the Spill Cleanup Policy only addresses recent spills in certain areas, and from certain sources, and for which cleanup begins within the stated timeframe (40 CFR 761.120).

The Agency recognizes that other cleanup standards for PCBs and mixtures of PCBs with other constituents may exist at both the Federal and State levels. These included standards or requirements for determining remediation levels as listed in the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300), and the requirements listed in the regulation proposed to address corrective action at RCRA facilities (55 FR 30798, July 27, 1990).

In some situations the Spill Cleanup Policy has been used to address PCB spills which either did not rightfully fall under the policy, or should have also fallen under the more stringent cleanup standards of other regulations. However, the Policy was never intended to address all spills, and the public should be aware that some cleanups may be subject to more (or less) stringent cleanup levels under other Federal and State regulations than are in the TSCA Spill Cleanup Policy. Therefore, the Agency is requesting comments on coordination of PCB spill cleanups with the requirements of other Federal statutes.

H. PCB Storage Requirements

1. *Indefinite storage of PCB Articles designated for reuse.* EPA regulations specifically state at 40 CFR 761.65(a) that PCB Articles or PCB Containers may be stored for disposal for no longer than 1 year. However, there currently is no comparable regulation for the length of time a PCB Article may be stored for the purpose of reuse. EPA had never intended allowing PCB Articles to be stored for an indefinite period of time. Further, it has come to EPA's attention that PCB Transformers and PCB-Contaminated Transformers have been held "in storage" well beyond a time when it is reasonable to expect the equipment could be reused under the pretext that the equipment is being retained as "spares" for critical components of electrical systems. EPA intends to make clear that items may not be placed in storage for an indefinite period of time under the pretense that they are "in use." EPA considers this activity to constitute illegal disposal. Therefore, EPA is considering a requirement to label PCB Articles at the time they are placed into storage for reuse and to limit the storage for reuse to a certain period of time. EPA solicits comments on this issue and, in particular, whether limitations should be placed on the period of time allowed for storage for reuse of certain PCB Items, or whether a more flexible approach, such as a requirement that a "reuse or reclassification schedule" be developed on a case-specific basis and submitted to EPA for approval with a justification which provides the rationale for requesting an extension and details regarding anticipated dates for removal from storage.

2. *Clarification of the 1-year storage for disposal requirement.* EPA wants to clarify the requirement at § 761.65(a) which states that "a PCB Article or PCB Container must be disposed of within 1 year from the date the item is first placed into storage." The intent of the regulation is to ensure disposal 1 year from the date the PCB Article or PCB Container is removed from service for disposal. For example, a PCB Transformer is removed from service on May 1 due to a rupture which rendered the equipment useless. Efforts to place the equipment in storage are hampered by circumstances beyond the owner/operator's control, and the transformer is placed into storage for disposal 25 days later. In this scenario EPA would interpret May 1 as the beginning date of the 1-year disposal requirement, not May 26. This interpretation is supported in the proposed regulation dated May 24, 1977 on page 26569 in the discussion of the time allowed for storage prior to disposal. The preamble states, "Thereafter, any item must be disposed of within 1 year from the time it is designated for disposal."

EPA is considering amending the language at § 761.65(a) to make explicit when the "storage for disposal" clock starts for PCB Items and solicits comments on this issue.

3. *Situations which warrant an extension of the 1-year storage for disposal requirement.* EPA is aware of at least two situations which may warrant an extension of the 1-year storage for disposal requirement and solicits comments on these or other situations that may require similar consideration. EPA wishes comments on alternative options, procedures and/or restrictions that should be considered in addressing these issues.

One scenario includes long-term biological destruction processes. Biological PCB disposal may not destroy PCBs at rates comparable to existing chemical and thermal destruction processes. Although biological destruction is largely in the developmental stage, it appears that biological destruction may take more than 1 year to achieve acceptable residual post-treatment levels.

EPA solicits comments on the appropriateness of temporarily suspending the 1-year storage period, prior to the end of the 9th month of storage for disposal, for the treatment/

destruction of regulated PCBs which have begun disposal in an approved or authorized long-term biological treatment/destruction process. EPA is considering extending the 1-year storage for disposal period for the entire time of a biological treatment if that particular biological treatment technology is expected to take more than 1 year to achieve acceptable post-treatment levels. The extension would provide a fair opportunity for success for the biological process, while maintaining a provision for timely completion of a more thoroughly demonstrated or conventional disposal in the event the biological method was not completely successful. Extensions would be granted upon approval of the request, and would be limited to 1 year beyond the existing 1 year storage for disposal allowance. Further extensions might be requested if it could be demonstrated that the treatment was near completion.

Another scenario addresses the absence of adequate capacity for the disposal of radioactive mixed wastes. Currently, there is limited treatment and disposal capacity for such wastes. Even when additional treatment facilities come on-line, it will take several years to reduce the large volume of waste already in storage. EPA solicits comments on whether the regulations should be amended to allow for an extension of the 1-year limit when certain conditions are met. The conditions would include, but are not necessarily limited to:

(1) A justification of the need to store wastes beyond 1-year. Until adequate disposal facilities exist, the lack of treatment or disposal capacity would constitute an acceptable justification.

(2) A demonstration that relevant treatment or disposal requirements are being pursued.

(3) Periodic progress reports.

Although this proposal will not resolve all legal difficulties associated with disposing of this waste, it would alleviate the problem posed by the current PCB storage regulation. EPA solicits comments on whether an extension of the storage deadline should be applied under TSCA for PCB wastes with radioactive constituents as is currently available under RCRA for hazardous wastes when inadequate capacity exists.

I. Exclusion for Laboratories Which Provide PCB Analytical Samples for Multi-laboratory Quality Assurance Purposes

EPA has received a number of inquiries as to whether "round robin" analytical exercises or inter-laboratory studies require exemptions from the ban on distribution of PCBs. These kinds of activities are normally conducted as quality assurance measures to test or verify a laboratory's performance using a given chemical analysis methodology.

Due to the need for effective compliance and enforcement of the PCB regulations, EPA is considering exempting laboratories participating in multi-laboratory studies from the regulations relating to the distribution in commerce of PCB analytical standards and dilution of PCBs for purposes of analysis, if certain requirements are met by the laboratory. These requirements may include, but may not be restricted to, the following:

(1) A notification that the lab is engaged in developing analytical standards.

(2) A restriction on the size of the sample, annual production volumes, import/export activities, etc.

The Agency is soliciting comments on any other considerations that should be included in its review of analytical laboratory activities.

J. Class Exemption for EPA and National Institute for Standards and Testing to Process and/or Distribute PCB Standards and Standard Reference Materials in Commerce

There have been a number of inquiries as to whether it is necessary for EPA and the National Institute for Standards and Testing (NIST) to have an exemption from the ban on the processing and distribution in commerce of PCBs for distribution of standards and audit samples. The EPA laboratories and other U.S. Government agencies, primarily the National Institute for Standards and Testing, distribute these materials themselves or through their agents on a non-profit basis.

Although distribution in commerce, processing, and use of analytical standards in general requires an exemption or authorization by rulemaking, performing analyses on samples to determine PCB concentration for enforcement or compliance purposes by EPA or other Federal entities (and their current contractors acting as agents) is not restricted under TSCA. EPA's authority to conduct PCB analyses is an implied authority; EPA is responsible for implementation and enforcement of the PCB regulations, and it could not effectively implement or enforce the regulations without the authority to analyze and maintain samples for implementation or enforcement of the regulations. Thus, distribution in commerce, processing, or use of such samples by the EPA or other Federal government entities (and contractors acting as their agents) does not require an exemption or authorization. Other persons must obtain such an exemption or authorization. Because of the number of questions EPA has received about this issue, EPA intends to include this position explicitly in its regulations.

K. 500 Gallon Exemption Under the PCB Notification and Manifesting Rule

In the Federal Register of December 21, 1989 EPA promulgated the final Notification and Manifesting regulation (54 FR 52716). In that regulation EPA required that commercial storers of PCB waste seek approval to commercially store PCB waste. If, however, a facility stored no more than 500 gallons of PCB waste the owner or operator was not required to seek approval as a commercial storer.

In the Federal Register of June 27, 1990 (55 FR 26204), EPA issued a correction to the Notification and Manifesting regulation that, among other things, further clarified the scope of the exemption to mean the owner or operator of a facility which stores no more than 500 gallons of "liquid" PCB waste is not required to seek approval as a commercial storer. In response to an issue raised by a litigant regarding EPA's publication of the correction, EPA agrees there may be reasons for establishing a small quantity exemption for solids (Refs. 6 and 7).

EPA is soliciting comments on establishing a small quantity exemption for non-liquid PCB waste to complement the Notification and Manifesting regulation's small quantity exemption for liquids as found in § 761.3. EPA is soliciting comments on the scope of such an exemption, e.g., what is the appropriate volume cut-off, and whether the exemption should be made available for all, or only certain limited commercial storage scenarios for PCB waste, such as small-scale research and development activities that use or dispose of PCBs and "treatability" studies conducted using regulated PCB waste?

L. State Enhancement Activities

EPA is requesting comments on a proposal to allow Federal recognition of State-issued PCB storage and disposal permits, in an effort to limit concurrent Federal/State permitting for PCB storage and disposal.

Current disposal requirements at 40 CFR 761.60, 761.65 and 761.70 prescribe conditions for PCB storage and disposal, including Federal permit requirements. Since a number of states also have

various permit requirements (Ref. 8), the regulated community often must procure both Federal and State permits prior to commencing storage or disposal activities. EPA is considering the enactment of provisions that would eliminate the need for concurrent Federal TSCA requirements for those aspects of the disposal program that can be acceptably addressed by states that regulate PCBs under expanded State hazardous waste or TSCA look-alike programs.

EPA would encourage states to list PCBs under their State RCRA program by making resources available through one of several grant programs, as appropriated by Congress. As additional states regulate PCB storage and disposal through expanded state hazardous waste or other programs, facilities in those states would be eligible to receive a Federal PCB permit by rule after petitioning EPA.

In the broader context, Federal implementation of all or portions of certain environmental programs (e.g., CERCLA site remediation, RCRA corrective action, National Pollution Discharge Elimination System (NPDES) permitting) are also under consideration for inclusion in the permit by rule provision. The Agency sees limited environmental return for resources expended on implementing more than one waste management program controlling the same material at the same site.

EPA is soliciting comments on the effect of this proposal on enforcement activities, national consistency, policy advantages/disadvantages and the specific aspects of the PCB storage and disposal program.

IV. Public Record

EPA has established a public docket for this notice (docket number OPTS-66009). The public docket contains the references listed below.

(1) Letter from Pepper, Hamilton & Scheetz to William K. Reilly, Administrator, EPA transmitting a section 21 petition regarding certain PCB disposal provisions.[OPTS Docket 210025] (February 2, 1990).

(2) Section 21 Petition from Pepper, Hamilton & Scheetz to the EPA with attachments [OPTS Docket 210025] (February 2, 1990).

(3) Letter from Linda J. Fisher, Assistant Administrator, Office of Pesticides and Toxic Substances, EPA to William J. Walsh; Pepper, Hamilton Scheetz and William H. Hyatt; Pitney, Hardin, Kipp & Szuch in response to the February 2, 1990 section 21 petition (June 8, 1990).

(4) USEPA, OPTS/OTS. "Interim Guidance On Non-Liquid PCB Disposal Methods To Be Used As Alternatives To A 40 CFR 761.75 Chemical Waste Landfill (CWL)," (July 3, 1990).

(5) Letter from John A. Moore, Assistant Administrator, Office of Pesticides and Toxic Substances, EPA to Toni K. Allen, Piper Marbury regarding an interpretation of the PCB regulations on the disposal of transformer carcasses (September 9, 1986).

(6) Petition for Review, filed by Chemical Waste Management, Inc. in the United States Court of Appeals for the District of Columbia Circuit (September 25, 1990).

(7) Letter from James C. Nelson, Acting Associate General Counsel, Pesticides and Toxic Substances Division, EPA to Mary Edgar, Piper Marbury regarding an exemption for the storage of small quantities of solids (March 1, 1991).

(8) USEPA, OPTS/OTS/EAD. "Summary of State PCB Management Programs." Report prepared under contract by Abt Associates, Inc. (February 19, 1991).

(9) USDOT. "Performance-Oriented Packaging Standards; Changes to Classification, Hazard Communication, Packaging and Handling Requirements Based on UN Standards and Agency Initiative." (55 FR 52402, December 21, 1990).

Lists of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls (PCBs), Reporting and recordkeeping requirements.

Dated: June 2, 1991.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticide and Toxic Substances.

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